

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 520 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MENABEN P;ARASNATH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 520 of 1993
MR NITIN M AMIN for Petitioner No. 1
MR KC SHAH, APP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The appellant in this appeal has challenged the judgment and order of conviction and sentence passed by the learned Addl. Sessions Judge, Mehsana in Sessions Case No.228 of 1992 dated 3.3.1993. By the said judgment, the appellant is convicted for an offence punishable under section 302 of IPC and sentenced to suffer R.I.for life and to pay a fine of Rs. 2000/-, in default, to undergo R.I.for six months. She is, however, acquitted by the learned judge for offence punishable under section 498-A of the IPC. The appellant and her son Sanjaykumar were charged for committing murder of Shivkumari alias Rekha. It may be stated that the appellant is the mother-in-law and original accused no.1 Sanjay was the husband of deceased Shivkumari alias Rekha. It was alleged against the accused that on 3.5.1992 at 8.30 a.m., the deceased was beaten in the quarter of Kalol GIDC, Village Saij as she did not bring the amount from her father. It was specifically alleged against the appellant that she poured kerosene on her and set the deceased ablaze. In the said act, the original accused no.1 Sanjay abetted her. At the end of the trial, the learned trial judge, after appreciating the evidence on record, including further statement of the accused, convicted the appellant for the proved offence and passed sentence as stated above. He, however, acquitted accused no.1 Sanjay.

2. Learned Counsel Mr.Amin appearing for the appellant has taken us through the entire evidence on record. Learned Counsel for the appellant has submitted that the trial court has committed an error in convicting the appellant relying on the oral dying declaration of the deceased made before Dr. Sunil Chauhan, Medical Officer, Kalol Municipal Hospital. He recorded the same as case history in the medical case papers. Learned Counsel submitted that considering the physical condition of the deceased and especially when she died within half an hour while on way to Ahmedabad, she could not have made the statement. It was further submitted that the possibility of incorporating the fact of involvement of the appellant in medical case papers by the police cannot be ruled out. In substance, it was submitted that in absence of any other independent evidence corroborating the oral dying declaration, no conviction can be based and, therefore, the appellant is required to be acquitted.

3. Learned APP Mr. Shah, on the other hand, has supported the judgment of the trial court in toto.

4. The prosecution, in order to bring home the charge against the appellant, mainly placed reliance on the evidence of Samshersing Rajput, PW 1 Ex.12, father of the deceased, Ashaben Rajput, PW 3 Ex.16, mother of the deceased. Besides the evidence of relatives, reliance is also placed on the medical evidence by examining Dr. Sunil Chauhan, PW2 Ex.13, Medical Officer, Kalol Municipal Hospital who examined the deceased, Dr. Vinaykumar Patel, PW 4 Ex.23 who was Medical Officer of Kalol Municipal Hospital who examined both the accused as also Dr. Vinayakrao Patil, PW 7 Ex.31 who performed the post-mortem of the deceased. Besides the aforesaid witnesses, the prosecution has also examined panchas as well as Circle Inspector for the purpose of showing the topography of the scene of offence. The evidence of police witnesses will be referred to at an appropriate stage. The defence has also examined Jashwantsing Rajput, DW 1, the son of the appellant.

5. According to the evidence of PW 1 Samshersing, the deceased was the eldest of his children. According to him, the marriage between the deceased and Sanjay had taken place 8 to 9 years prior to the incident. The father of Sanjay was serving in a factory situated at GIDC, Kalol. The deceased was staying with them. His daughter became the mother of two children after marriage. According to him, the accused used to quarrel with his daughter and used to demand money from her. Her husband in fact had tried to commit offence punishable under section 307 of the IPC and had remained in jail for 9 to 10 months. Again after his release, a quarrel for getting money had taken place and his daughter was beaten. Regarding the said incident, he has stated that on 3.5.1992, the maternal uncle of accused no.1 Sanjay came to his house at about 8.30 a.m. and informed him that his daughter sustained burn injuries and was admitted in municipal hospital. Accordingly, PW 1 and PW 3 went to the hospital in rickshaw. When they met the deceased in the hospital, she was conscious. On being asked as to how she sustained burn injuries, she informed that the accused used to beat her since three days and was demanding money. She involved both the accused by telling that they poured kerosene on her, ignited a match stick and set her ablaze. On the advice of the doctor, the deceased was taken in ambulance to Civil Hospital, Ahmedabad. She died during the treatment at about 11.45 a.m. He returned to Kalol from Ahmedabad at about 10.30/11.00 at night and thereafter he filed a complaint at Kalol Police Station. He has been cross examined at length. However, nothing substantial has been brought out from his evidence.

6. PW 3 Ashadevi Rajput has given almost similar version and, therefore, it is not necessary to repeat the same.

7. Dr.Sunil Shah, PW 2 Ex. 13 was at the relevant time serving as Medical Officer in Kalol Municipal Hospital. According to him, the deceased was brought to the hospital by her relative. After examining her, he found burn injuries on the front as well as back portion of the chest. He also found injuries on both hands, face and both thighs. According to him, she had sustained burn injuries to the extent of 41 to 48%. When she was brought to the hospital, she was fully conscious and able to speak. On making inquiry from her about the incident, she told him that her mother-in-law (appellant) burnt her. She had a quarrel with her since last three days. He has recorded the said statement in case papers. He has brought the original case papers. He identified his handwriting. The case papers are produced at Ex. 14. He has also produced injury certificate of the deceased at Ex. 15. After giving primary treatment, the deceased was transferred to Civil Hospital, Ahmedabad. He informed Kalol Police Station. According to him, smell of kerosene was coming out from the body of the deceased and, therefore, kerosene must have been poured on her. He has specifically stated that the said injuries are possible if kerosene is poured and thereafter the body is burnt. In his cross examination, he has stated that he was on emergency duty. Besides him, there were other doctors who were performing their duties. He has explained certain portions having been written in English and certain portions written in Gujarati in the case papers by stating that the words "Darbar-GIDC" have been written by him. The rest of the portion has been written by the concerned clerk at the time of taking out case papers. He, however, has admitted that the case history and other details have been written by him. He has denied that the case history has been incorporated subsequently. He has also denied that the ink in Gujarati and English writing is different. He has specifically stated that he has written case papers on 3.5.1992. He has denied that certificate Ex. 14 was written after 17.5.1992. He informed the police by stating that a lady named Rekhaben was admitted in burnt condition. He stated that Rekhaben was admitted at 8.45 a.m. He has denied that Rekhaben had sustained more than 90% burn injuries. He has further stated that six to seven persons brought the deceased to hospital. They were gents and ladies. At the time of giving treatment, he asked the visitors to go out and to wait outside. At

the time of treatment, only nurse and ward boy/dresser were present. At the time of treatment, he did not permit the husband and/or anybody to enter the room. While giving treatment, he had come out from the room and informed the relatives that Rekhaben will have to be taken to Ahmedabad. He had not allowed any outsider to enter the room when the treatment was going on. He allowed outsiders to enter the room only after he informed them that Rekhaben was required to be taken to Ahmedabad. According to him, Rekhaben remained in the hospital for about 20 to 25 minutes before being taken to Ahmedabad. He has also stated that he inquired about the incident from the deceased while giving treatment. According to him, when Rekhaben informed him that her mother-in-law burnt her, the nurse and ward boy/dresser were present. He, however, did not remember their names. According to him, over and above the statement given by Rekhaben, she might have given some further details. However, as the same were not relevant, he has not entered the same. According to him, both he and Rekhaben were conscious of the fact that the condition of Rekhaben was serious. He has further stated that the police had not entered the hospital till Rekha was there. On being asked as to whether he was on leave from 3.5.1992 till 17.5.1992, he replied that he did not remember. He has specifically denied the suggestion that the medical certificate Ex. 14 was prepared after 17.5.1992.

After minutely examining the evidence of Dr. Chauhan, we are of the opinion that without exaggerating anything, he has deposed in a most natural manner. From his evidence, it is clear that the deceased had sustained burn injuries to the extent of 48% and the deceased was fully conscious. She has involved only the appellant by stating that the appellant burnt her after pouring kerosene on her because of the quarrel going on since last three days. Dr. Chauhan being an independent and responsible Medical Officer has no reason to falsely involve the appellant. He has taken down the version given by the deceased in verbatim. The statement given by the deceased is immediately after the incident and first in point of time. There is no reason to doubt the truthfulness of the said statement.

8. Once Dr. Chauhan denies the suggestion that the deceased had sustained burn injuries to the extent of 90% and was not in a position to speak, we have to accept the opinion of the doctor, namely that the deceased had sustained injuries to the extent of 48% and she was fully conscious and gave her statement before the doctor who recorded in verbatim. In that view of the matter, in our

opinion, the dying declaration made by the deceased before the doctor which was recorded by him, is truthful and reliable. The said statement was recorded while giving treatment to the deceased and no relatives were present at that time. This would go to suggest that the statement given by the deceased was free from any pressure or being a tutored one.

9. Learned Counsel for the appellant, however, invited our attention to Ex. 15, the medical certificate dated 1.1.1993 wherein he has mentioned burn injuries while narrating the case history. Our attention is also invited to Ex.36, the entry in the police station diary recorded by Head Constable Khodaji Amthaji, PW 9 Ex. 35, PSO of Kalol Taluka Police Station. PSO of Kalol Taluka Police Station was conveyed information on telephone by Dr. Chauhan that Rekhaben, aged 20 years, residing in GIDC Quarters was brought to the hospital in a burnt condition and was transferred to Ahmedabad Civil Hospital and, therefore, to do the needful in the matter. It was contended by the learned Counsel for the appellant that Dr. Chauhan, in the medical certificate Ex. 15 and in the information given to Kalol Taluka Police Station, has stated that the deceased was brought in a burnt condition. Since no further details are given by Dr. Chauhan, the alleged dying declaration in the medical case papers Ex. 14 is not truthful. In the submission of learned Counsel, the same must have been incorporated subsequently. It is not possible for us to accept the said submission. As observed earlier, Dr. Chauhan recorded the statement of deceased while giving treatment and the same was recorded as a case history in the medical case papers. It is not expected of him to give the very details to the police. The case on hand being a case of burn injuries, in all subsequent correspondence, the same i.e. burn injuries is mentioned. Therefore, the medical certificate Ex. 15 which was given subsequently and the entry Ex. 36 will not in any case change the situation. By no stretch of imagination, it can be held that the doctor acted as per the say of the investigating officer by subsequently incorporating the case history in the medical case papers. Had it been so, the doctor could as well have involved accused no.1 Sanjay, the husband of the deceased.

10. Dr. Patil, PW 7 Ex.31, Medical Officer of Civil Hospital, Ahmedabad who has been examined in the instant case had noticed burn injuries on various parts of the body of the deceased as stated by Dr. Chauhan. According to Dr. Patil, the deceased sustained injuries to the extent of 90% to 95% and the deceased died as a

result of shock due to burn injuries and consequent complications. Our attention is invited to the cross examination of Dr. Patil wherein he has stated that the person of such burn injuries may or may not clearly speak. It was further stated by Dr. Patil that the deceased did not die because of accident. However, it is possible that somebody else might have burnt her or she might have burnt herself. It was contended that in view of Dr. Patil's deposition, the deceased could not have made oral statement before Dr. Chauhan. In our opinion, the evidence of Dr. Patil cannot be read in such a way which would make the entire oral statement of the deceased before Dr. Chauhan non est. It may be recalled that the case history written by Dr. Chauhan immediately after the incident i.e. within half an hour, the deceased very briefly narrated the incident by involving appellant only without giving any unnecessary and lengthy details. Dr. Chauhan, in his evidence, has clearly stated that the deceased was conscious and was able to speak. Once the deceased involves the appellant, a suggestion put by the defence to Dr. Patil, namely that it was a suicidal case loses its significance. We are, therefore, of the opinion that the learned trial judge was justified in convicting the appellant by accepting the evidence of Dr. Chauhan who recorded the dying declaration in the form of case history of the deceased. We are also of the opinion that the learned trial judge was also justified in not accepting the evidence of the parents of the deceased. The parents, in the instant case, have tried to involve not only the appellant, but Sanjay also. In our opinion, the evidence of PW 1 Samshersing and PW 3 Ashadevi, the parents of the deceased, do not inspire confidence as they have tried to involve the husband of the deceased with a view to see that all the members of the family of the accused are involved in the commission of crime. In view of the fact that the complaint was given after about 15 hours from the incident, the possibility of involving both the accused falsely cannot be ruled out. Apart from that, there was no occasion for them to get the information about the incident from the deceased as Dr. Chauhan has clearly stated that he had asked all the relatives of the deceased to go out of room. It is only after Dr. Chauhan narrated the case history from the mouth of the deceased, he allowed other relatives to meet her. Once the deceased had already disclosed the involvement of only appellant, it is not possible for us to accept that the deceased subsequently also involved her husband Sanjay in the commission of offence. We, therefore, cannot rule out the possibility on the part of PW 1 and PW 3 to falsely involve the husband of the deceased. We,

therefore, entirely in agreement with the reasonings of the learned trial judge who acquitted the original accused no.1 Sanjay. Apart from that, they being parents of the deceased, are highly interested witnesses and, therefore, no reliance can be placed on their evidence.

11. Learned Counsel for the appellant also submitted that the prosecution has not examined independent witnesses whose statements were in fact recorded by police and were dropped as witnesses without any reason. Our attention is invited to pursis Ex.22 whereby the learned APP sought permission to drop about 9 witnesses. Learned Counsel for the accused in fact objected on the ground that those witnesses were present at the time of incident.

Having gone through the contents of Ex. 22, it is clear that the prosecution dropped the aforesaid witnesses on the ground that they were the relatives and neighbours of accused and, therefore, no useful purpose would have been served by examining them. As no contention was raised before the learned trial judge, it was not discussed in the judgment and, therefore, it is not possible for us to know the relevancy of the evidence of those witnesses. By dropping the witness Vanrajsing Chudasma and Nemchand Hirabhai, a question was put to Investigating Officer Jashwantsing Chavda, PW 10 Ex. 37 wherein he has stated that their statements were recorded prior to registering the offence. He has denied the suggestion that those witnesses had reached the spot at the earliest point of time.

Reading the evidence of Investigating Officer Chavda, it is clear that the statements of those witnesses were recorded before registering offence. In view of the fact that he had denied the suggestion that both the witnesses had reached at the earliest point of time and without there being any further details as to they knew anything about the incident from the mouth of the deceased, it appears that the prosecution has not examined those witnesses. In any case, once the deceased was taken to hospital without there being any delay and the doctor being an independent person took the case history from her, we are of the opinion that non examination of the relatives and the neighbours will not in any way make the case foolproof against the appellant. We, therefore, reject this contention.

12. We have also gone through the evidence of defence witness, namely DW 1 Ex.52 Jashwantsing Rajput, the son of the appellant. After carefully examining his

evidence, we are of the opinion that he being an interested witness, his evidence does not inspire confidence. The learned trial judge, by giving reasons, has rejected his evidence. Since we are in total agreement with the reasonings of the learned trial judge, it would be mere repetition if we re-narrate the same. We, therefore, refrain from re-narrating the same. Suffice it to say that we are in total agreement with the reasonings of the learned trial judge in rejecting the evidence of Jashwantsing.

13. The above discussion would lead us to the only conclusion that the appellant is responsible for committing murder of her daughter-in-law deceased Rekha. The prosecution, in our opinion, has proved the case against the appellant beyond reasonable doubt.

14. We, therefore, see no merit in this appeal and dismiss the same by confirming the judgment and order of conviction and sentence passed in Sessions Case No. 228 of 1992 by learned Addl. Sessions Judge, Mehsana dated 3.3.1993. Appeal is accordingly dismissed.

As per the order passed by this Court in Cr.Misc. Application No. 7337 of 1999 dated 21.12.1999, the appellant is on bail. At the request of the learned Counsel for the appellant, we grant four weeks time to the appellant to surrender before the jail authorities.

(Kshitij R.Vyas, J.)

(Akshay H.Mehta, J.)

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